

MINUTES

UTAH PHYSICAL THERAPY BOARD MEETING

June 20, 2007

**Room 402 – 4th Floor – 9:00 A.M.
Heber Wells Building
Salt Lake City, UT 84111**

CONVENED: 9:30 A.M.

ADJOURNED: 11:00 A.M.

Bureau Manager:
Board Secretary:

Noel Taxin
Karen McCall

Board Members Present:

Mark A. Anderson
Misha Bradford
Edmund L. Sperry

Board Members Absent:

Margo Jones Brady
J. Trent Casper

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

Acting Board Chairperson

Mark A. Anderson volunteered to act as Board Chairperson in the absence of Margo Jones Brady.

MINUTES:

The minutes from the May 31, 2006 meeting were read.

Ms. Bradford made a motion to approve the minutes as read. Mr. Sperry seconded the motion. **The Board vote was unanimous.**

BUSINESS FROM PREVIOUS MEETING:

Follow-up by Ms. Taxin regarding Contacting the Agency when a Complaint is Received

Ms. Taxin explained that the Board had asked her to check into the possibility of notifying agencies when complaints are received at the Division. Ms. Taxin stated that at the time she had said she did not think the Division could notify employers of complaints against Physical Therapists but she would check on it.

Ms. Taxin stated that she was right that the Division cannot notify agencies of complaints against Physical Therapists as it is a violation of GRAMA. She stated that agencies could be notified once an Order has been issued but agencies and licensees could call to find out for themselves. She explained that with the thousands of cases that are investigated the Division does not have the man power to call each employer. Ms. Taxin stated that if there is an Order signed it usually requires the licensee to notify their employer and for the employer to send a letter of acknowledgement that they have read and understand the requirements of the Order.

Mr. Anderson asked if the employer would only know of an incident if an Order was signed and the Order required the employer to acknowledge that they know, have read the Order and understand the requirements.

Ms. Taxin responded that he is correct.

Mr. Anderson asked if the Division could require the Physical Therapist to notify the employer if there is an open investigation going on.

Ms. Taxin responded that the employer could include in the employment contract that all employees must notify them of any legal actions. She stated that if an investigation finds a licensee guilty then the licensee may request a hearing before the Board, the Division may offer an Order or the license may be revoked. She stated that by the final stages in the process the employer could discover the issue but the Division could not confirm information until the investigation is complete.

Ms. Taxin stated that recently there was a situation where a licensee refused to inform the employer and as required in the Order. She stated that when she told the licensee that the letter from the employer needed to be submitted immediately, the licensee informed the employer and was terminated from his position. She stated that she believes the licensee waited too long to inform the employer.

Ms. Taxin stated that when she was working in the local hospitals she required her employees to read the Laws and Rules for their profession and sign a form that they had read them. She stated that all licensees should read the Laws and Rules and understand them. Ms. Taxin stated that it is appropriate for employers to hold licensees accountable for the requirements in the Laws and Rules.

The Board thanked Ms. Taxin for the information.

APPOINTMENTS:

9:30 A.M.

Kim Reid, Discussion regarding any Proposed 2008 Legislation

Mr. Reid met with the Board to present the changes the Association plans to present to the Legislature in 2008.

Mr. Reid stated that one of the key issues is to include licensing for the Physical Therapy Assistants. He stated that the Division brought it to the attention of the Association that the current Law is outdated. He stated that Ohio has recently updated their Law to require a Master's degree for the Physical Therapist and Utah needs to update our Law to reflect current education information.

Mr. Reid stated that it is his intent to meet with the Chiropractic Physicians and the Utah Medical Association to be sure they understand the proposed Law and that all might come to an agreement prior to presenting the proposed changes to the Legislature.

Mr. Reid distributed the list of changes for the Board to review.

Mr. Reid reviewed number 1 of the proposed Law which states: Maintaining the ability of the Physical Therapist to perform Mobilization and Manipulation of the soft tissues and joints of the musculo-skeletal system. He stated that an issue with the Chiropractic Physicians is regarding manipulation and the Chiropractors are adamant that Physical Therapists do not manipulate anything to do with the spine. Mr. Reid stated that the Physical Therapists have had the training and ability to do manipulation for quite some

time and there is extensive information which would allow for it. He stated that manipulation and mobilization was put into the Law many years ago and there is no plan to change that language. Mr. Reid referred the Board to the definition of Joint Mobilization and stated that the definition will not be changed. He explained that the Chiropractic Board's issue is that some Physical Therapists are using adjustment.

Mr. Anderson asked if the Chiropractors are comfortable with the language in the current Law. He stated that the Physical Therapists do not want new language to be more restrictive and he would like to see the current language retained.

Mr. Reid responded that the University education program is of the opinion that the current language should be retained and/or expanded.

Ms. Taxin recommended defining the difference between manipulation and mobilization. She stated that the Division receives numerous phone calls asking if the Physical Therapist can do manipulation and what that entails.

Ms. Taxin stated that there a few Physical Therapists that are currently working outside the scope of their practice.

Ms. Bradford asked if the Chiropractic Physicians are nervous about the Physical Therapists using the word manipulation.

Mr. Sperry responded that the Chiropractors are worried about the insurance payments. He explained that some of the insurance companies are paying for Physical Therapy but not for Chiropractic services.

Mr. Reid stated that the Association looks at the issue from a National level. He stated that Physical Therapists have done manipulation since World War I.

Ms. Bradford informed the Board that the colleges and universities are teaching Physical Therapists

some manipulation and adjustment in their education programs. She stated that it appears the term manipulation is a protected term. She asked if manipulation is just a term or if it is a technique that is used.

Mr. Reid stated that there is some vagueness on purpose. He stated that the terms generally used by Chiropractors were not used in the Physical Therapy Law. He stated that the Physical Therapists need to be careful and not use the term adjustment.

Ms. Bradford asked if the education programs should be teaching the term manipulation and not adjustment.

Ms. Taxin referred her to 58-24a-104 in the Law where it refers to Physical agents and physical activities, under (2) it says physical activities and devices, including: (b) joint mobilization as the division defines by rule. Ms. Taxin stated that the Law does not say manipulation but does say joint mobilization. She stated that when she has lectured at the University of Utah she has told the Physical Therapists that they can do mobilization and not manipulation. She stated that when people call she tells them they cannot do manipulation but can do mobilization. Ms. Taxin stated that the Law defines the activities and to her it says the Physical Therapist cannot do any twisting of the spine to adjust it. She reminded the Board and Mr. Reed that once the Law is opened the language may be changed by anyone. She stated that it would advantageous to come up with a definition for both manipulation and mobilization to clarify their differences.

Mr. Anderson stated that he does not want to get caught up in an argument of what manipulation is and what mobilization is. He recommended the Association move forward and improve the Law. He stated that if too many changes are recommended it might be a long, drawn out process and might have to be pulled as the Chiropractors have Legislative lobbying power.

Ms. Taxin recommended this section of the Law not be changed as it refers to being defined by Rule and then write the difference in the Rule definition.

Mr. Sperry stated that the recommendation of putting a definition in the Rules would give flexibility.

Ms. Taxin stated that the Association will schedule a discussion with the Chiropractic Board to discuss the issue.

Mr. Anderson stated that the National Chiropractic Association agrees with using the term mobilization.

Ms. Taxin clarified that if she is cracking the back of a client, that is manipulation but if she is working on the client to relax the back and it cracks, that is mobilization. She stated that when the Physical Therapist is pulling traction the bones also move around.

Mr. Reid commented that Chiropractors believe Physical Therapists should not be touching clients but should be exercising them.

Mr. Anderson stated that he has a concern that clients can call Chiropractic clinics to ask if they do mobilization and Physical Therapy and the clinic could answer yes they do.

Mr. Sperry commented that he had the same concern.

Mr. Reid stated that he understood that Chiropractic clinics were saying that they do adjustments and Physical Therapy.

Ms. Taxin stated that it might be the same technique. She stated that the Physical Therapist uses other methods to achieve the same results.

Mr. Reid stated that the Physical Therapist and the Chiropractor might be doing using similar techniques.

Mr. Reid reviewed number 2 of the proposed Law which states: Protection of the term “Physical Therapy” as a profession. Mr. Reid explained that Physical Therapists do not have term protection in the current Law. He stated that Physical Therapy is not a generic description but it is a profession. He explained that the Physical Therapist may take the clients vital signs in course of their care, which they are qualified to do, but it does not make them a Nurse or Physician. He stated that also if the Physical Therapist uses techniques to mobilize or manipulate a joint or soft tissues it does not make them a Chiropractor or Massage Technician. He stated that the Association also wants to change the name of the Law from Physical Therapist Practice Act to Physical Therapy Act as it would then include the Physical Therapists and the Physical Therapy Assistants.

Ms. Taxin recommended Mr. Reid also include what the Physical Therapist may sign with their name, such as PT.

Mr. Reid stated that the Physical Therapist should sign their name with the acronym PT after the name. He explained that he has a bachelor degree in Physical Therapy and signs his name with BSPT after his name.

Ms. Taxin stated that it should also be specified in the Law to clear up any confusion that the Physical Therapist may sign P.T. or PT and the Physical Therapy Assistant may use P.T.A. or PTA. Ms. Taxin stated that it should be written out in the Law stating the specific acronym, not written as open ended and not a protected term.

Mr. Reid stated that Chiropractors advertise that they do Physical Therapy as they use Physical Therapy modalities. He stated that there is a difference in using Physical Therapy modalities and in doing Physical Therapy. He stated that Chiropractors may treat patients but not for Physical Therapy. Mr. Reid stated that there are some Chiropractors who are hiring Physical Therapists and have them at the Chiropractors site of business but some Physical Therapists are not at the Chiropractors site of business and the Chiropractors are signing the notes in both

cases.

Mr. Reid reviewed number 3 of the proposed Law which states: Mandatory continuing education units for renewal of licensure for the physical therapist and physical therapist assistant. He stated that Utah is part of a small group of States that does not require CE.

Ms. Taxin recommended he review the language in those professions that do require CE for ideas on how to write that section such as Social Work or Athletic Trainer.

Ms. McCall commented that the Law usually states the requirement with the Rule defining the requirements.

Mr. Sperry asked if the Division or the Board would review CE programs to approve or deny them.

Ms. Taxin responded that the Rules should define the requirements so that the Division or the Board do not have to review to approve or deny programs. She stated that the Board will write the Rules to define the requirements after the Law has been passed by the Legislature.

Mr. Anderson stated that the APTA is in the business of approving programs as they charge a fee for the service. He stated that he would like to see APTA be the approving body.

Ms. Taxin explained that sometimes the Associations do not have the man power to review programs. She stated that the requirement should include that the CE has to relate to the profession to be sure licensees are not just attending personal programs they are interested in. She stated that there are internet sites that may have great courses available but might not be APTA approved. Ms. Taxin asked if the Association or Board cares if the Association or APTA approves CE or if the Rules outline specific requirements so that the licensee may decide the appropriate CE.

Mr. Reid responded that right now the Utah Association works hard to provide and sponsor courses.

No final decision was made regarding the Physical Therapy continuing education approval.

Mr. Reid reviewed number 4 of the proposed Law which states: Licensure of the Physical Therapist Assistant. He explained that Utah is one of only a few States that does not regulate Physical Therapy Assistants. He stated that there is shortage of Physical Therapists and Physical Therapy Assistants in Utah. Mr. Reid stated that the Association is of the opinion that it is important to regulate Physical Therapy Assistants but have no way to contact them as they are not regulated. He stated that the Physical Therapy Assistants are not currently required to take the NPTE examination or complete CE requirements. Mr. Reid stated that there is some concern about requiring the Physical Therapy Assistants to be licensed as it would infringe on the practice of the Physical Therapist. He stated that the Association would like to have the Physical Therapy Assistants be under specified supervision of a licensed Physical Therapist. He explained that currently a Physical Therapy Assistant can go into a home and do therapy before the Physical Therapist has assessed the patient.

Mr. Anderson stated that requiring the Physical Therapy Assistant to be licensed is a public safety issue.

Ms. Taxin stated that the current Rules do require the Physical Therapy Assistant to be supervised by a licensed Physical Therapist. She stated that the scope of practice for the Physical Therapy Assistant should also be included in the law. Ms. Taxin stated that the Rule can then define what supervision is required for that scope of practice. Ms. Taxin recommended that the Law also include that the Physical Therapist cannot supervise more than 3 or 4 Physical Therapy Assistants.

Ms. McCall suggested the Law include that the Physical Therapy Assistant cannot be in private

practice.

Ms. Taxin stated that the Law should also address if the Physical Therapy Assistant would be allowed to supervise an aide.

Mr. Reid stated that both the private practice issue and the supervising of aides will be addressed. He stated that the Physical Therapy aide may treat a patient without any supportive staff immediately available.

Mr. Anderson suggested Mr. Reid review the language requirements of another State before making a final decision.

Ms. Taxin recommended Mr. Reid review several other States language.

Mr. Reid responded that there are also people at APTA that are available to assist the Utah Association with areas that they need assistance.

Mr. Reid reviewed number 5 of the proposed Law which states: Language of either disapproval or prevention of Physician ownership of Physical Therapy services where referral to such a service results in financial incentive to the Physician owner. He explained that there is currently a trend for a Physician to start and own a Physical Therapy facility and services. Mr. Reid stated that this is a profit issue as a Physician should not be able to refer a patient to their own facility for profit. He stated that it makes surrounding clinics unable to compete.

Mr. Anderson stated that this would prohibit a Physician from owning a Physical Therapy agency.

Ms. Taxin stated that if a Physician knows a Physical Therapist is good, why could the Physician not refer the patient to that Physical Therapist.

Mr. Reid stated that South Carolina has set precedence by not allowing Physicians to refer patients to their own Physical Therapy agencies. He stated that Orthopedic Surgeons are generally the Physicians doing this type of referrals.

Mr. Anderson commented that Medicare has completed some studies of Physician owned Physical Therapy clinics versus free standing clinics and determined that qualified services are better in the free standing clinics.

Ms. Taxin stated that she is not sure if the Division has a preference or position. She stated that the patient should have a choice.

Mr. Reid stated that if the Orthopedic Physicians where he works owned their Physical Therapy clinics his clinic would go out of business. He stated that one of the reasons the Association wants the Physical Therapy Assistant to be under the supervision of a Physical Therapist is ensure that the Physical Therapy Assistant does not go to a Chiropractic or Physicians clinic with no supervision. He stated that he did not believe the Law could require the Physical Therapy Assistant to be employed only at a Physical Therapy clinic.

Ms. Taxin responded that his concern might fit under unprofessional conduct or Mr. Reid might include a statement that the Physical Therapy Assistant must comply with the APTA Code of Ethics. She stated that if it is unprofessional conduct and complaint comes in the investigator could say the licensee is held to the requirement in the APTA Code of Ethics.

Mr. Anderson asked if there is reason Utah cannot use the same language that South Carolina has used.

Mr. Reid stated that the AMA generally opposes a Physician referring patients to their own Physical Therapy clinic. He stated that the Association does not want to doom the proposed Law as there are other issues that are also important. He stated that Legislation might not be the way to stop the practice across the country of Physicians referring to their own Physical Therapy clinic.

Mr. Sperry commented that if the Utah Association

organized a grass roots lobby at the Legislature with all their Association members they would be an unstoppable force for their Legislation. Mr. Sperry stated that the focus should stay away from the monetary part.

Mr. Reid responded that there are about 500 members in the Utah Association.

Ms. Taxin asked Mr. Anderson if he was part of the Association Board.

Mr. Anderson responded that he is not a Board member of the Association but is an Association member.

Ms. Taxin stated that he may represent himself as an Association member but cannot represent as an Association Board member as it would conflict with his State of Utah DOPL appointment.

Mr. Reid asked for another meeting in a couple of months for the Board to review the final draft of the proposed Law.

Upon reviewing schedules, a meeting was scheduled for August 7, 2007 from 8:30 to noon.

Ms. Taxin asked if the Association would want to address the issue of Physical Therapists doing EMG's and the use of needles, as she has received phone calls asking if they can use these modalities. She then asked if any upcoming or new modalities should be discussed to include in the Law.

Mr. Reid responded that the Model Practice Act covers the modalities that are accepted and the above are not generally accepted modalities.

Mr. Anderson responded that Ms. Taxin is asking if there are any other new, upcoming modalities that Utah might want to address in the proposed Law that might be more prevalent.

Ms. Taxin stated that there are other modalities that are used that are not listed in the current Law.

She stated again that if she receives a phone call she refers them back to the current Law and tells the caller if the modality they are asking about is not on the list, then it is not to be used in Utah.

Ms. Bradford stated that diagnostic ultra-sound comes to her mind and ultra-sound for torn muscles.

Ms. Taxin stated that the Association will need to get the draft ready and find a sponsor right away for the 2008 Legislative session.

Mr. Reid requested Ms. Taxin to explain to him the process.

Ms. Taxin explained that the Association obtains a sponsor for the Bill and then the Bill goes to Legislative Research to be reviewed.

Mr. Reid stated that their Lobbyist has informed him that they already have a sponsor.

Ms. Taxin stated that the sponsor will be able to help him through the process. She suggested he find out who wrote the Athletic Trainer Law and maybe contact that person as it was written quite simple and clear. Ms. Taxin stated that if the Association is able to get the proposed Law into the interim committee to review they are more apt to get it into the 2008 Legislative session.

Mr. Reid responded that he has already written most of the language himself for the proposed Law.

Ms. Taxin requested a draft be sent to her as soon as possible for the Division to review.

Mr. Reid stated he would send a copy as soon as possible.

Mr. Anderson stated that if the Association and Board need to meet with the Chiropractic Physicians and/or the Physicians Board there will be time to schedule those meetings.

Ms. Taxin gave Mr. Reid her e-mail address to facilitate receiving the draft copy as soon as possible. She reminded him to underline the new language and put a line through what is being deleted from the current Law.

Mr. Reid responded that there are so many changes that it is basically a repeal of the current Law and a replacement.

Ms. Bradford requested the Board members be given a copy of the draft also.

Ms. Taxin responded that the draft should be reviewed by the Division attorneys first and then she will send a copy out to the Board members.

DISCUSSION ITEMS:

FYI

Ms. Taxin informed the Board of the resignation of Craig Jackson as Division Director and the appointment of F. David Stanley as Division Director.

Mr. Anderson voiced regret that Mr. Jackson resigned. He stated that Mr. Jackson understood Physical Therapy and was helpful when the Board needed his support.

Ms. Taxin responded that Mr. Stanley will be very supportive of the profession. She stated he is still learning the variety of professions but that he is an asset to the Division and they will like him as the new Director.

Board Chairperson

Ms. Taxin reminded the Board that Board Chairperson goes on the agenda each year. She stated that the Board may retain the current Board chairperson or nominate another Board member to be the chairperson. Ms. Taxin stated that Margo Brady goes off the Board June 30, 2009.

Mr. Sperry commented that it makes sense to change chairperson. He stated that there will be a short spurt of activity if there is going to be Legislation the first of 2008. He asked how long Ms. Brady has served as Board chairperson.

Ms. Taxin responded that Ms. Brady served 2 years as Board chairperson. Ms. Taxin stated that it is a Board decision regarding the chair and that the Division does not make decisions for the position. She stated they could re-nominate Ms. Brady or someone else.

Mr. Sperry nominated Mark Anderson as chairperson. Ms. Bradford seconded the motion. The Board vote was unanimous.

Annual Board Member Training

Ms. Taxin explained that every year she is required to conduct a Board member training.

Mr. Anderson stated that there are 2 Board members absent today. He requested this item be deferred until all Board members are present.

CORRESPONDENCE:

FSBPT Correspondence

The Board reviewed the following FSBPT correspondence:

1. The Forum Magazine, Spring 2007. **No Board action was taken.**
2. 2007 Budget. **No Board action was taken.**
3. New NPTE Content Outlines. **No Board action was taken.**
4. Update on NPTE Item Trafficking in the Philippines. **Ms. Taxin reminded the Board that FSBPT put a hold on all NPTE score reports from the Philippines due to the breach in the examination. She stated that FSBPT is still investigating. No Board action was taken. The information was given to Mr. Anderson.**

FYI

Ms. Taxin reported that she will be attending the FSBPT Conference September 5 through 10, 2007. She stated that FSBPT agreed to her being the Delegate and the Administrator for Utah as there were no Board members available to attend as the Delegate.

Mr. Anderson responded that he would be interested in attending if it is still possible.

Ms. Taxin stated that she will contact FSBPT to see if it is possible and if they will fund his attendance.

Mr. Anderson thanked Ms. Taxin for the notification and for checking into his attending the conference.

Clarification on Change to Ohio PT Law regarding Masters Degree Requirement

Ms. Taxin read the letter from Ohio. **No Board action was taken.**

Arizona Newsletter

The Board reviewed the Newsletter with no action taken.

NEXT MEETING SCHEDULED FOR:

August 7, 2007 from 8:30 A.M. to 12:00 P.M.

ADJOURN:

The time is 11:00 am and the meeting is adjourned.

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.

September 25, 2007
Date Approved

(ss) Mark A. Anderson
Chairperson, Utah Physical Therapy Licensing Board

August 6, 2007
Date Approved

(ss) Noel Taxin
Bureau Manager, Division of Occupational & Professional Licensing